4 LEARNING FROM THE CONNECTICUT EXPERIENCE

The conclusions about competition that come from a close examination of the "Connecticut experience" are indeed compelling, but they are very different from the claims advanced by Peter Huber and others as to the salutary effects of ILEC interLATA entry. Our analysis shows that SNET's participation in the interLATA market has not resulted in any significant increase in competition in that already highly competitive market. In fact, SNET's rates in Connecticut for interLATA toll calls are no lower than the rates offered by interexchange carriers serving the nation as a whole. The only apparent increase in toll competition in Connecticut can be found in the *intra*LATA (i.e., intrastate) market, where relatively recent changes in the state's policies on 10XXX competition and, more importantly, the availability of intraLATA equal access (1+ dialing), finally gave the IXCs the ability to compete with SNET for residential and small business customers.

Not only has SNET's participation in the interLATA toll market failed to produce any significant price reductions for Connecticut consumers, it has also been anything but beneficial to the development of local competition. Huber has not produced any hard evidence that local competition in Connecticut has developed more quickly or has advanced farther than in states where the BOCs are restricted from interLATA entry, and there is no evidence of intense local competition reflected in SNET's rates for local exchange service, which remain at or above comparable rates in many other states where the ILEC remains excluded from the interLATA market.

Our examination of SNET's progress toward fulfilling the requirements of the *Telecommunications Act of 1996*, as well as earlier Connecticut legislation, also shows why the tangible incentives confronting Bell Operating Companies to accommodate local market entry that are contained in Section 271 represent a well-conceived approach whose fundamental soundness remains undiminished by BOC efforts to undermine its potency or to mischaracterize its effect. Although Connecticut's legislators and regulators provided the impetus for that state to get out in front of most others in implementing local exchange competition, SNET has seemed intent on ensuring that every bit of progress toward that

goal is as slow as possible and is made extremely resource-intensive for new entrants. CLECs have spent over three years trying to break into the Connecticut local exchange market, but have been frustrated in their efforts by SNET's evasive business practices and its artful manipulation of the regulatory process.

As the FCC has correctly observed, "Section 271 thus creates a critically important incentive for BOCs to cooperate in introducing competition in their historically monopolized local telecommunications markets."[89] The BOCs — which have cited SNET's participation in the interLATA long distance market as an example of why Section 271 is unnecessary and even counterproductive — are keenly aware of the importance of this incentive. Ameritech's Chief Executive Officer, Richard Notebaert, commenting recently on the difference between Ameritech and GTE (which, like SNET, is not subject to the Section 271) is quoted as saying: "The big difference between us and them is they're already in long distance - What's their incentive to cooperate?"[90] The Connecticut experience shows precisely how uncooperative an ILEC will be in the absence of a compelling incentive to remove entry barriers to local competition, and reaffirms the wisdom of the competitive checklist and public interest standard that serve as threshold requirements for the BOCs reentry into the interLATA market.

89. *Ameritech Michigan Order*, at para. 14.

90. Mike Mills, "Holding the Line on Phone Rivalry; GTE Keeps Potential Competitors, Regulators' Price Guidelines at Bay," *The Washington Post*, October 23, 1996, at C12.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	**CC Docket No. 98-121**
Second Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana	)	

AFFIDAVIT

OF

PATRICIA A. MCFARLAND

ON BEHALF OF

AT&T CORP.

AT&T EXHIBIT J

Filed August 4, 1998

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AFFIDAVIT OF
PATRICIA A. MCFARLAND
ON BEHALF OF AT&T CORP.

Patricia A. McFarland, being first duly sworn upon oath, does hereby depose and state as follows:

I. AFFIANT

1. My name is Patricia A. McFarland. My business address is 1200 Peachtree Street N.E., Atlanta, Georgia 30309.

2. I am employed by AT&T Corp. ("AT&T") as a manager in the Regulatory Chief Financial Officer ("RCFO") organization. As such, I am responsible for AT&T regulatory financial activities in a number of states and for a number of subject matter areas, such as local exchange carrier ("LEC") cost analysis functions.

3. In 1968, I began my career at Pacific Telephone Company in San Francisco where I held a variety of Operator Services staff and line positions. I primarily performed payroll, budgeting and scheduling functions. In 1982, at divestiture, I transferred to AT&T and assumed responsibility for LEC billing in conjunction with California Operator Services Shared Network Facilities Agreements. In 1985, I accepted the position of Assistant Manager - Accounting Regulatory Support responsible for AT&T financial regulatory matters for Oregon and Washington. In May of 1991, I transferred to my present organization in Atlanta, Georgia. Initially, I was responsible for AT&T financial regulatory matters for the south central states. In 1995, I accepted my current position of Manager - RCFO.

4. I have a degree in Business Administration with a concentration in Accounting from Oglethorpe University in Atlanta, Georgia. I am a Certified Public Accountant licensed in the state of Georgia.

5. I have testified on behalf of AT&T in numerous regulatory proceedings concerning telecommunications services, including proceedings presenting issues under the Telecommunications Act of 1996. I previously have filed affidavits before this Commission concerning earlier applications by BellSouth Telecommunications, Inc. ("BellSouth") and its section 272 affiliate, BellSouth Long Distance, Inc. ("BSLD"), to provide in-region interLATA service in Louisiana and South Carolina.

II. SCOPE OF AFFIDAVIT AND SUMMARY

6. Section 272 of the Communications Act of 1934, as amended by the Federal Telecommunications Act of 1996 (the "Act"), bars a Bell Operating Company ("BOC")

from providing in-region interLATA service unless it provides such service through an affiliate that meets the separation and nondiscrimination requirements of that section. By imposing a variety of accounting and nonaccounting safeguards, section 272 attempts both to prevent a BOC from discriminating against its competitors and in favor of its long-distance affiliate, and to prevent a BOC from subsidizing its affiliate by recovering the affiliate's costs from the BOC's local and exchange access service customers.[1] As this Commission has stressed, the obligations and restrictions under section 272 are of "crucial importance."[2]

7. The purpose of this Affidavit is to discuss the failure of BellSouth and its section 272 affiliate, BSLD,[3] to meet their burden of establishing that they will operate in compliance with section 272 if and when BellSouth is granted authorization to provide in-region

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[1] "Congress ... enacted section 272 to respond to the concerns about anticompetitive discrimination and cost-shifting that arise when the BOC enters the interLATA services market in an in-region state in which the local exchange market is not yet fully competitive." Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Action of 1934, As Amended, CC Docket No. 96-149, Second Order on Reconsideration, FCC 97-222 (released June 24, 1997), ¶ 5. The section 272 affiliate is required, among other things, to operate independently from the BOC, to maintain separate books and records, to have separate officers, directors, and employees, and to conduct all transactions with the BOC on an arm's length basis, reducing such transactions to writing, available for public inspection. § 272 (b). In addition, the BOC is prohibited from discriminating in favor of its section 272 affiliate in the provision of "goods, services, facilities, and information, or in the establishment of standards." § 272(c).

[2] Application of Ameritech Michigan Pursuant To Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137, Memorandum Opinion and Order (released Aug. 19, 1997) ("Ameritech Michigan Order"), at ¶ 346.

[3] According to BellSouth, BSLD is a wholly-owned subsidiary of BellSouth Long Distance Holdings, Inc. which in turn is a wholly owned subsidiary of BellSouth Corporation. Wentworth Aff. ¶ 7 at 2.

interLATA services. In its application, BellSouth has not provided the sort of detailed, specific evidence concerning both its past and current transactions with BSLD that is necessary to permit the Commission to come to any conclusion as to whether it will comply with section 272. Indeed, the evidence presented by BellSouth plainly demonstrates that if it were granted interLATA authority today, it would not be in compliance with section 272.

8. In the Ameritech Michigan Order, the Commission made clear that BOCs are "obligated to comply" with the requirements of section 272 "as of the date [the Act] was enacted," which was February 8, 1996. Ameritech Michigan Order ¶ 371. The Commission further noted that BOCs must comply with the requirements of the Accounting Safeguards Order[4] at the time of the effective date, id., which was August 12, 1997.

9. Despite these clear pronouncements, however, BellSouth and BSLD repeatedly defy the Commission in this application, asserting that they are not now subject to the requirements of Section 272 or the Accounting Safeguards Order.[5] BellSouth and BSLD assert this position essentially without discussion, and do not even acknowledge this Commission's contrary decision in the Ameritech Michigan Order. This defiance by BellSouth and BSLD

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[4] Implementation of the Telecommunications Act of 1996, Accounting Safeguards Under the Telecommunications Act of 1996, CC Docket No. 96-150, Report and Order (released Dec. 24, 1996) ("Accounting Safeguards Order"), ¶ 122.

[5] See, e.g., Cochran Aff. ¶ 9 (BellSouth "is not yet subject to section 272"); id. ¶ 21 (BellSouth is not currently subject to the "documentation requirements" of section 272); Wentworth Aff. ¶14.d. at 13 (BSLD is "not obligated" to publish its written agreements on the Internet); Varner Aff. ¶ 219 at 83 (BellSouth is "not required to comply with the safeguards of section 272 until it receives interLATA authorization.").

should cause this Commission to be especially hesitant to accept BellSouth's various bare promises to comply with its obligations under Section 272.

10. For the following reasons, among others, BellSouth and BSLD are not in compliance with the disclosure requirements of section 272(b)(5) and the Accounting Safeguards Order:

a). BellSouth has refused to disclose the details regarding what it identifies as "past transactions," instead providing only general summaries without rates or terms and conditions. These transactions appear to have been substantial, with total billings to BSLD of over $7.7 million, and many were ongoing in October and November 1997, well after the effective date of the Accounting Safeguards Order.

b). BellSouth also has failed to provide sufficient information regarding its ongoing transactions with BSLD, disclosing only a bare contractual framework for potential transactions, which does not disclose such basic information as whether a transaction occurred, when it occurred, what particular asset, information, or service was bought or sold, and how much was paid. These disclosed contractual arrangements also contain inadequate information on the rates and the method of valuation used in setting those rates. This failure to disclose adequate information regarding the current BellSouth/BSLD transactions violates the requirements of section 272(b)(5), and precludes any finding that BellSouth and BSLD will comply with section 272.

c). The need for full and detailed disclosure of all transactions between BellSouth and BSLD is shown starkly by the BellSouth/BSLD collocation agreement, which on its face provides term commitments more favorable to BSLD than are being offered to CLECs.

d). BellSouth has not complied with the Internet posting requirements under the Accounting Safeguards Order, failing to post any information concerning a number of substantial transactions concluded between September, 1997 and November 1997 until after its present application was filed on July 9, 1998.

e). BellSouth also has failed to present sufficient evidence to justify its refusal to disclose any transactions between BSLD and other BellSouth affiliates.

11. BellSouth also has not identified sufficient internal systems or procedures that it has instituted specifically to address the requirements of section 272 and to attempt to protect against violations of section 272. I am familiar with such internal compliance systems instituted by other BOCs -- such as oversight committees to review section 272 transactions, and customer contact points to protect against "off-the-record" transactions -- and I believe that such compliance programs are essential for a BOC to establish that it is ready and able to comply with section 272.

12. Nor has BellSouth provided any information or evidence to explain how it will identify, end, and correct, through a "true-up" or otherwise, any improper cross-subsidization and discrimination that may already have occurred. The risk that such inappropriate subsidization or discrimination has occurred is substantial, because BellSouth apparently has been operating

under the view that none of the transactions between it and BSLD have been subject to the restrictions of section 272. Unless some attempt is made to identify and rectify any such impermissible transactions, BSLD will be able to enter the interLATA market with improper subsidies or other illicit and anticompetitive advantages.[6]

13. BellSouth and BSLD, by not providing any information regarding the reporting structure for their officers and employees, have not met their burden of establishing that they have truly separate and independent officers, directors, and employees, as required by section 272(b)(3). Without such information, it is impossible to determine whether, as a practical matter, the officers of BellSouth and BSLD report, not to an independent board, but rather to officers within their parent corporation who oversee the operations of both BellSouth and BSLD.

14. In addition, BellSouth's planned use of CPNI under section 222 -- allowing BSLD access to CPNI not available to competing IXCs on the same terms and conditions -- cannot be squared with the nondiscrimination requirements of section 272. The Commission's previous determination approving such discriminatory access to CPNI should be reconsidered.

15. Finally, BellSouth's decision to recommend BSLD long distance service at the outset of inbound calls for new service should be found to violate the equal access requirements under section 251(g) and to give BOCs an unfair advantage over competing IXCs. The Commission made this precise finding in the Ameritech Michigan Order, and its abrupt reversal of this decision in the BellSouth South Carolina Order is not justified by law or policy.

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[6] See Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, FCC 96-489 (released Dec. 24, 1996) ("Non-Accounting Safeguards Order"), ¶¶ 9-13.

16. Ultimately, BellSouth's evidence that it will comply with section 272 amounts to only paper promises. These assurances are not due any significant weight, especially in light of the fact that in the past auditors have found BellSouth's behavior to be "obstructionist," preventing the auditors from even being able to form an opinion regarding whether BellSouth was improperly subsidizing affiliates.[7]

III. BELLSOUTH MUST PRESENT SPECIFIC, TANGIBLE EVIDENCE, NOT MERE PROMISES, TO MEET ITS BURDEN UNDER SECTION 271(d)(3).

17. In the Ameritech Michigan Order, the Commission made clear that BOCs bear the burden under section 271(d)(3) of establishing that they will operate in compliance with section 272 if granted interLATA authority. Ameritech Michigan Order, ¶¶ 43, 371. Moreover, "[p]aper promises do not, and cannot, satisfy a BOC's burden of proof." Id. at ¶ 55. The requirement that a BOC come forward with specific, tangible evidence is especially appropriate in the context of section 272 compliance, because most of the evidence relevant to such a determination lies exclusively in the hands of the BOCs and their affiliates.

18. For these reasons, simple pledges by BellSouth that it "has been" or that it "will be" in compliance with section 272 should be given no weight. Rather, BellSouth must come forward with specific, concrete evidence that demonstrates its compliance with each of its obligations under section 272. The evidence that BellSouth must be required to present should include, among other things, the following, all of which are readily available to it:

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[7] See infra ¶¶ 69-74.

- detailed descriptions of all current and past individual transactions between BSLD and BellSouth, sufficient to evaluate compliance with the accounting rules, including terms and conditions, rates, and valuation methods;

- detailed descriptions of all transactions between BSLD and other affiliates that are part of "chain transactions" with BellSouth or that otherwise involve local exchange and exchange access facilities and capabilities;

- evidence that all such descriptions of transactions with BSLD are accurately posted on an Internet site, and that the posting takes place within ten days of the transaction;

- evidence that methods of valuing transactions between BellSouth and BSLD meet Commission guidelines (such as the derivation of the "fully distributed costs" that BellSouth repeatedly references in its general descriptions of services provided to BSLD) and have been fairly and accurately established;

- evidence that internal oversight procedures are in place to reduce the risk of discriminatory, non-arm's length transactions between BSLD and BellSouth, and to otherwise achieve and maintain compliance with section 272.

- evidence to show efforts undertaken to identify past transactions between BSLD and BellSouth that have unfairly subsidized or discriminated in favor of BSLD's operations;

- evidence to show how such discriminatory past transactions between BSLD and BellSouth have been "trued-up"so that BSLD does not enter the interLATA market with unlawful pre-authorization subsidies or other unlawful advantages from BellSouth;

- evidence of lines of reporting for BellSouth and BSLD officers and employees to show that they do not report directly to common officers within a parent corporation, which would compromise their independence;

- evidence of the specific nature and extent of funding of BSLD.

19. The absence of these types of specific evidence, without any justifying explanation, should raise immediate doubts as to whether a BOC and its section 272 affiliate have

in fact operated in compliance with section 272. A BOC cannot hope to meet its burden under section 271(d)(3) without such a presentation.

20. As I discuss more fully below, BellSouth's application fails to present the type of detailed, concrete evidence necessary to make any meaningful evaluation of its assertions that it will comply with section 272. Indeed, BellSouth repeatedly states its disagreement with the Commission regarding its obligations under section 272, stating that it is under no current obligation to ensure that its transactions with BSLD are publicly disclosed, are arm's length in nature, or otherwise comply with section 272 prior to being granted interLATA authority.[8]

IV. BELLSOUTH IS NOT IN COMPLIANCE WITH THE DISCLOSURE REQUIREMENTS OF SECTION 272(b)(5).

21. Section 272(b)(5) requires that "all transactions" between BellSouth and BSLD be "reduced to writing and available for public inspection." In the Accounting Safeguards Order, the Commission determined that this "reduced to writing" requirement meant "that the description of the asset or service and the terms and conditions of the transaction should be sufficiently detailed to allow us to evaluate compliance with our accounting rules." Accounting Safeguards Order, ¶ 122. In the Ameritech Michigan Order, the Commission also made clear that, in addition to "a statement of the valuation method used," such descriptions must "disclose

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[8] See n. 5, supra. BellSouth and BSLD nonetheless assert that they are currently in full compliance with the requirements of section 272, see BellSouth Br. at 66-67, and thus, even in their view, this application is properly judged based on whether BellSouth and BSLD have proven current compliance with section 272. See Ameritech Michigan Order ¶ 366 ("Because Ameritech asserts that it has complied with the Accounting Safeguards Order, we examine Ameritech's compliance with the requirements adopted in that order.").

the actual rates for [the BOC's] transactions with its Section 272 affiliate." Ameritech Michigan Order, ¶ 369.

22. The requirement that all transactions between a BOC and its Section 272 affiliate be reduced to writing and made available for public inspection has been in effect since the passage of the Act on February 8, 1996. In the Ameritech Michigan Order the Commission specifically held that BOCs have been obligated to comply with these requirements "as of the date [the Act] was enacted," and found that Ameritech, "in order to demonstrate compliance with section 272(b)(5)," must "make available for public inspection all transactions between [it and its section 272 affiliate] after February 8, 1996." Ameritech Michigan Order ¶ 371 (emphasis added).

23. In addition, the Accounting Safeguards Order held that Section 272(b)(5)'s public disclosure obligation requires affiliates, "at a minimum, to provide a detailed written description of the asset or service transferred and the terms and conditions of the transaction on the Internet within 10 days of the transaction through the company's home page." Accounting Safeguards Order, ¶ 122. The Accounting Safeguards Order's public disclosure obligations became effective over eleven months ago, on August 12, 1997.[9]

24. The public disclosure requirements of section 272(b)(5) and the Accounting Safeguards Order are critical to enabling CLECs, IXCs, and the Commission to assess, among other things, (i) whether the BOC is impermissibly subsidizing its section 272

[9] See Accounting Safeguard Rule Changes Requiring OMB Approval Soon to be Effective, Public Notice, DA 97-1669 (released Aug. 5, 1997).

affiliate, and (ii) whether the BOC is impermissibly engaging in transactions with its section 272 affiliate with terms, conditions, or arrangements that are more favorable than those offered to CLECs or to IXCs. Furthermore, the information disclosed must be "detailed" and sufficient "to allow [the Commission] to evaluate compliance with [its] accounting rules." Accounting Safeguards Order, ¶ 122. Obviously, a simple disclosure that certain types of transactions occurred, or might have occurred, and the general subject matter of those transactions is insufficient. See Ameritech Michigan Order, ¶ 367. BellSouth and BSLD have fallen far short of meeting these obligations.

A. The Meager Summaries Provided Regarding Certain Selected Past Transactions Between BellSouth And BSLD Do Not Do Not Satisfy The Disclosure Requirements Under Section 272.

25. The meager summaries BSLD and BellSouth have provided concerning certain selected "past transactions" clearly do not comply with section 272(b)(5) and the Accounting Safeguards Order. The only information concerning past transactions between BellSouth and BSLD presented in this section 271 application is contained in the affidavit of Lynn A. Wentworth. Wentworth Aff. ¶ 14.c. at 7. That affidavit does not provide descriptions of individual past transactions, but rather broadly summarizes twelve categories of services that BellSouth has provided to BSLD, such as "Customer Billing Services," "Project Management," "Initial Planning," Network - Infrastructure Planning and Management - Provision of CIC Code," and "Information Technology - Product Integration." Wentworth Aff. ¶ 14.c. at 7-12. Although BSLD and BellSouth have chosen only to disclose bare summaries of these transactions, they

plainly were substantial, with total billings (according to BSLD and BellSouth) of $7,760,200 for the period from April 1996 through November 1997. See Wentworth Aff. ¶ 14.c.

26. Not one of the descriptions provided under these service category headings for "past transactions" includes rates for any particular transaction. Instead, each description of a service category provides only a total billing figure for all the transactions grouped under that category for a stated time period. For example, the "Information Technology - Billing Systems" category states that BellSouth has provided BSLD "services associated with the development, design, coding, and testing of systems, including infrastructure changes, to bill long distance products to end users," and "[t]he amount for these services totaled $3,267,300" for "services ... provided from April, 1996 through October, 1997." Wentworth Aff. ¶ 14.c(7) at 10-11.[10]

27. By refusing to identify rates for any of these past transactions, half of which were still ongoing in October and November 1997 (well after the Accounting Safeguards Order's effective date),[11] BellSouth and BSLD blatantly fail to meet the requirement, plainly stated in the Ameritech Michigan Order, "to disclose the actual rates for its transactions with its

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[10] Similarly, the Wentworth Affidavit states that the amount for "Customer Billing Services" for the period from April, 1996 through November, 1997 "totaled $1,045,000," while the amount for "Sales Channel Planning Design" services for the period from April, 1996 through October, 1997 "totaled $1,653,000." Wentworth Aff. ¶14.c(1) & c(5) at 8,10.

[11] The Wentworth Affidavit states that the following three categories of services were provided "through November, 1997": "Customer Billing Services" (with total billings of $1,045,000); Information Technology - Billing Systems" (with total billings of $3,267,300); and "Investment Related Costs - PCs" (with total billings of $41,800). Similarly, the following three categories of services were provided "through October, 1997": "Project Management" (with total billings of $266,900); "Sales Channel Planning and Design" (with total billings of $1,653,000); and"Mail Service" (with total billings of $84,000). Wentworth Aff. ¶14.c at 7-13.

section 272 affiliate." Ameritech Michigan Order ¶ 369. This failure alone justifies rejection of this application.

28. Similarly, the descriptions of past transactions provided by BellSouth and BSLD fall woefully short of meeting the requirement, again stated plainly in the Ameritech Michigan Order, to describe "the terms and conditions of each individual transaction," rather than "only a general description of the asset or service." Ameritech Michigan Order ¶ 369. Instead of providing the required "terms and conditions of each individual transaction," BellSouth and BSLD provide general one-paragraph descriptions which purport to disclose multiple transactions spanning a period of as many as twenty months with millions of dollars of billings. Again, this "disclosure" is in blatant violation of the requirements of Section 272 and the Accounting Safeguards Order. See Ameritech Michigan Order ¶ 369.

29. BSLD's repeated assertion regarding each of these past transactions that "BSLD's understanding is that these services were billed at fully distributed costs"[12] also is inadequate to meet its burden of showing compliance with the applicable accounting rules. At a minimum, BellSouth and BSLD must demonstrate that the fully distributed costs used for billing were fairly and accurately established.

30. In addition, it appears that BellSouth and BSLD have chosen not to disclose all their past transactions, and instead have presented only a selection of their past transactions. BellSouth and BSLD never assert that the summaries provided include a description

[12] BSLD's vague statement of its "understanding" that the fully distributed cost method of valuation was used for these services, as expressed in the Wentworth Affidavit, is never specifically confirmed as accurate by any other affidavit submitted in this application.

of all their past transactions, see e.g., Wentworth Aff. ¶ 14.c. at 7-13; BellSouth Br. at 67, and they have dropped from this application summaries of four categories of "past transactions" that previously were listed on their Internet site, see infra ¶ 50.

31. Absent evidence that they have provided detailed descriptions of all their past transactions, BellSouth and BSLD cannot satisfy their burden of establishing compliance with section 272. The Ameritech Michigan Order made such a disclosure a prerequisite to approval of an application under section 272: "[I]n order to demonstrate compliance with section 272(b)(5) in a future application, we expect that Ameritech and ACI will make available for public inspection all transactions between them that occurred after February 8, 1996." Ameritech Michigan Order ¶ 371.

32. BellSouth and BSLD also do not state whether written agreements were entered into for all their past transactions. If written agreements exist, they must be disclosed by BellSouth before any judgment can be made as to the arm's length character of these transactions. If written agreements do not exist for all these services, as appears the case for at least some of them,[13] the lack of written agreements is itself a violation of section 272(b)(5).[14]

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[13] For four of the categories of past services identified as provided by BellSouth to BSLD, the Wentworth Affidavit states that "[t]he writings associated with [these] transaction[s] consist of the billing provided to BSLD by [BellSouth]," thus strongly suggesting that no other writings exist to reflect these transactions. The total billings for these four categories of transactions, according to the Wentworth Affidavit, is $784,200. Wentworth Aff. ¶ 14.c. at 7-13.

[14] BellSouth is not at liberty to conduct its dealings with BSLD on any basis other than through written agreements, and those agreements must be available for public inspection. Section 272(b)(5) requires that all "transactions" between a BOC and its affiliate must be "reduced to writing," while the Accounting Safeguards Order provides that a "transaction"

(continued...)

B. The Disclosure Of "Current Transactions" Between BellSouth And BSLD Also Fails To Meet The Requirements Of Section 272.

33. The disclosure provided by BSLD and BellSouth regarding their "current transactions" (Wentworth Aff. ¶ 14.b. at 7) also is plainly insufficient to meet the requirements of Section 272 and the Accounting Safeguards Order. First, BellSouth's submission to this Commission (Exhibit 4 to Wentworth Affidavit), as well as its Internet site, disclose only the contractual framework for potential transactions, and fail to disclose information regarding any details of the underlying individual transactions themselves.

34. Thus, even after a close review of the information presented on BellSouth's Internet site and in this application, I am unable to determine whether any transaction actually took place under each of the thirteen listed contractual arrangements, or what was paid to BellSouth by BSLD for the transaction, or what specific asset or service or information was transferred, or when any such transaction took place. This basic information -- whether a transaction occurred, when it occurred, what was bought or sold, and how much was paid -- is a fundamental part of the disclosure obligations under Section 272(b)(5) and the Accounting Safeguards Order. See Accounting Safeguards Order ¶ 122 (requiring a "a detailed written description of the asset or service transferred and the terms and conditions of the transaction"); see also id. ¶ 252 ("Parties will be able to determine the specific services and facilities that a BOC provides to its section 272 affiliate by inspecting the documentation that must be maintained

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[14] (...continued)
exists "[o]nce the BOC and its affiliate have agreed upon the terms and conditions." Accounting Safeguards Order, ¶ 124.

pursuant to section 272(b)(5)."); Ameritech Michigan Order ¶ 369 (requiring disclosure of "the terms and conditions of each individual transaction").

35. Moreover, certain statements by BellSouth and BSLD in this application raise substantial doubts as to whether they even have disclosed all their "current transactions." For example, at one point BellSouth and BSLD state that they have disclosed only "executed written agreements" between BellSouth and BSLD, Wentworth Aff. ¶14.d., and at another point that they have disclosed only "BSLD contracts with [BellSouth]," Wentworth Aff. ¶ 14.b. at 7. Obviously, the disclosure obligation exists for all "transactions," and is not limited to those transactions reflected by "executed written agreements," or "contracts."[15] A "transaction" occurs whenever BellSouth and BSLD agree on the terms and conditions for an exchange of information, facilities, and services. Accounting Safeguards Order ¶ 124. At the very least, therefore, BellSouth and BSLD must come forward and clarify (i) whether their current disclosure is limited

[15] In addition, the agreements made available at BellSouth's Atlanta offices, see infra n. 27, are not accompanied by any certification statement of any kind, despite the plain requirement under the Accounting Safeguards Order, ¶ 122, that "[t]he information made available at the principal place of business must include a certification statement ... [which] declares that an officer of the BOC has examined the submission and that to the best of the officer's knowledge all statements of fact contained in the submission are true and the submission is an accurate statement of the affairs of the BOC for the relevant period." The absence of this certification statement raises further doubts as to the completeness of BellSouth's disclosure.

to only such "executed written agreements,"[16] and (ii) whether all current transactions are in fact reflected in written agreements, see supra n. 14.

36. In addition, as with the descriptions of the past transactions, the disclosed agreements for current transactions contain inadequate information of the rates and the method of valuation used in setting those rates. Some of the agreements contain no rate information, and instead contain only a total price figure and a general assurance that the total price complies with the applicable affiliate-transaction accounting rules. For example, the Workbrief Agreements Regarding AIN Applications, which anticipates having BellSouth employees working with BSLD employees to develop "an AIN architecture document," and "software for a Proprietary Calling Card Service Package Application," states that BellSouth "shall perform the work described ... for the fully distributed cost of said work in the amount of $80,000." Wentworth Aff., Exh. LAW 4. The total price figure of $80,000 does not constitute a "rate." Instead, BellSouth at a minimum must list the hourly rates that will be charged to BSLD for the work of different categories of BellSouth employees, and other assumptions such as level of employees and hours required.[17]

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[16] Another example of a "current transaction" that appears to have been omitted by BellSouth and BSLD concerns local telecommunications services. For completely unexplained reasons, BellSouth and BSLD no longer disclose local telecommunications services as among the current (or past) transactions, even though it seems safe to assume that BellSouth continues to provide such local exchange service to BSLD. Such local telecommunications services were posted as part of the "past transactions" summaries on BellSouth's Internet site as recently as July 10, 1998 (for services through August, 1997), although this listing has since been deleted. See infra ¶ 50 & n.28.

[17] Likewise, the Facility Use Agreement provides no rate information, merely stating an (continued...)

37. As noted above, this failure to provide any rate information is in direct violation of the Ameritech Michigan Order. Ameritech Michigan Order ¶ 369 (requiring disclosure of "the actual rates for [the BOC's] transactions with its Section 272 affiliate", and finding that "a statement of the valuation method used, without the details of the actual rate, does not provide the specificity we required in the Accounting Safeguards Order.").

38. Other disclosed agreements, although providing some rate information, fail to provide information on the particular valuation method used in reaching these rates.[18] The bare recitation of rates, without the disclosure of the valuation method used to reach those rates, falls far short of providing information needed to evaluate compliance with the accounting rules. Without a disclosure of the valuation method, no judgment can be made on whether a BOC has used an appropriate valuation method as dictated by the Accounting Safeguards Order, which requires that BOCs follow a prescribed hierarchy in selecting an appropriate valuation method.[19]

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[17] (...continued)
overall price of $42,250 for BellSouth testing and analysis of a Lucent 5ESS switch from a BellSouth facility. Wentworth Aff., Exhibit LAW 4, Facility Use Agreement.

[18] The Collocation Agreement, in which BellSouth grants BSLD the right to occupy space in BellSouth's central offices, provides no valuation methodology. Wentworth Aff., Exhibit LAW 4. Likewise, the BellSouth Clearinghouse Operating Agreement for the B&C Service Package, in which it is anticipated that BellSouth will provide billing and collection services for BSLD, provides no valuation methodology information. Wentworth Aff., Exhibit LAW 4.

[19] See Accounting Safeguards Order ¶¶ 125-159 (discussing different valuation methods); id. ¶¶ 126-27 (discussing the approved hierarchy of application for the different valuation methods). Thus, for example, without the disclosure of the valuation method, one cannot determine whether the BOC inappropriately used a prevailing price method of valuation when a tariff rate was available for the same service.